IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4484 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI SHIVLAL PANVALA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 26.12.2003. By the impugned order, the petitioner is detained as a

'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985. Along with the detention order, the petitioner has also been served with the grounds of detention.

The detaining authority, after considering one registered case against the petitioner, of which a reference is made in the detention order, and after considering the statements of two witness, whose names have not been disclosed to the petitioner, has detained the petitioner as a 'bootlegger' under PASA. It is the aforesaid order, which is under challenge in this petition.

The learned Advocate for the petitioner submitted that there is only one solitary case against the petitioner, and, that too, in connection with dealing with foreign liquor. It is submitted that, on the basis of one solitary case, the Authority should not have exercised the powers under PASA. It is submitted that so far as the statements of witnesses are concerned, even the names have not been disclosed and there is no credible material on record to show that before passing the order, the authority has tried to find out the antecedents of the detenu and there is no subjective satisfaction recorded by the authority in connection with not disclosing the names of witnesses by exercising powers under Section 9(2) of PASA.

The learned AGP, however, submitted that looking to the headstrong activities of the petitioner, the authority was of the opinion that if the names were disclosed, it will put into danger the lives of the witnesses.

To substantiate his say that there is no subjective satisfaction recorded by the authority in connection with not disclosing the names of witnesses by exercising powers under Section 9(2) of PASA, the learned Advocate for the petitioner placed reliance upon the decision of this Court in Kishor Naginbhai Parmar v. State of Gujarat & Ors., 2000 (4) GLR 3236, wherein this Court (Coram : A.L. Dave, J.) held as under :-

" ... ...

14. In this view of the matter, the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective

satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of proper exercise of powers under Sec.9(2) of the PASA Act and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition.

... ..."

Since such credible material is not available on record for withholding the names of the detenu, the detention stands vitiated for want of proper exercise of power under Section 9(2) of PASA.

If the statements are taken out, there is only one solitary case, which is a case registered under the Prohibition Act. The learned Advocate for the petitioner submitted that the only material which remains is the sole registered criminal case and that by itself cannot be said to be a material for the purpose of holding that the petitioner's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself.

For this purpose, the learned Advocate for the petitioner has relied upon the decision of a Division Bench of this Court rendered in L.P.A. No.223 of 2000, wherein in paragraph 5, it is held as under :

" ... ...

5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and

public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three

witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly

> be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants.
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> ... ..."

The learned Advocate for the petitioner submitted that this is a solitary incident and, therefore, it cannot be said that the petitioner is a habitual offender or that he has disturbed public order. He has also further submitted that since this is the solitary incident, the petitioner should not have been detained under PASA. In this connection, the learned Advocate for the petitioner has placed reliance upon the decision of this Court in Sandip Omprakash Gupta v. State of Gujarat and others, 2004(1) GLR 864, wherein a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside.

Considering the aforesaid aspect of the matter and considering the aforesaid judgments of this Court, the order of detention is required to be quashed and set aside on the ground that the authority has not properly and objectively considered the question about withholding the names of the witnesses under Section 9(2) of PASA and if the solitary case which is registered against the petitioner is taken into consideration, it cannot be said that the detenu has committed breach of public order, and, at the most, it can be said that he has committed breach of law and order, which can be dealt with under the ordinary criminal law.

The petition is accordingly allowed. The order

of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

29th July, 2004 (P.B. Majmudar, J.)

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(apj)